

relate to the licensee's ability to provide service to its customers within the maximum 100 x 100 square mile service area granted to many existing licensees, so long as any proposed modification does not result in mutual exclusivity with another licensee or timely filed applicant.<sup>32/</sup>

### VIII. CONCLUSION

In light of the foregoing, November 13, 1995 is the operative cut-off date for all pending 39 GHz applications that had not achieved cut-off status prior to that time. Furthermore, pending 39 GHz applications cannot be subject to the further filing of mutually exclusive applications. Additionally, the Commission must process all pending 39 GHz applications and pending amendments thereto, and allow at least thirty days following action on the Processing Order reconsideration for the filing of additional amendments to eliminate mutual exclusivity


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<sup>32/</sup> BizTel notes that the Processing Order clearly states that modification applications filed on or before December 15, 1995 are to be accepted for filing, and held in abeyance pending further action in the Rulemaking. See Processing Order, at ¶124. In a February 23, 1996 petition for reconsideration, BizTel sought the reinstatement of five BizTel modification applications, that were filed on November 13, 1995, and then improperly dismissed by the Microwave Branch on January 25, 1996. See Petition for Reconsideration of Dismissal and Reinstatement Nunc Pro Tunc; Application File Nos. 9601597, 9601598, 9601686, 9601687, 9601700 (filed February 23, 1996). To date, the Commission has failed to reinstate the BizTel modification applications. BizTel again requests that the five dismissed BizTel modification applications be reinstated immediately.

conflicts that still affect pending 39 GHz applications. Finally, the Commission must allow 39 GHz licensees to obtain modifications to their authorizations that reasonably relate to the licensee's ability to provide service to its customers within a 100 x 100 square mile service area, so long as any proposed modification does not result in mutual exclusivity with another licensee or timely filed applicant.

Respectfully submitted,

BIZTEL, INC.

By:   
Walter H. Sonnenfeldt

Walter Sonnenfeldt & Associates  
4904 Ertter Drive  
Rockville, Maryland 20852  
(301) 770-3299

Its Attorney

October 17, 1996

CERTIFICATE OF SERVICE


I, Kevin J. Walsh, hereby certify that on the 17th day of October, 1996, a true copy of the foregoing "SUPPLEMENTAL COMMENTS OF BIZTEL, INC." was mailed, first-class postage prepaid, to the following:

Louis Gurman  
Andrea S. Miano  
Gurman, Blask & Freedman, Chartered  
1400 16th Street, N.W., Suite 500  
Washington, D.C. 20036

Counsel for Commco, L.L.C., Plaincom, Inc., & Sintra  
Capital Corporation

Thomas J. Dougherty, Jr.  
Gardner, Carton & Douglas  
1301 K Street, N.W.  
Suite 900, East Tower  
Washington, D.C. 20005

Counsel for DCT Communications, Inc.

  
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Kevin J. Walsh